



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1993

Ms. Kathryn A. Hansen  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton  
Fort Worth, Texas 76102

OR93-001

Dear Ms. Hansen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17900.

The City of Fort Worth (the "city") has received a request for a certain report. Specifically, the requestor seeks "the report done by the independent inspector on Anderson Laboratories for 1992." You advise us that the requested report was prepared for Anderson Laboratories ("Anderson") by an independent consultant at the request of the Fort Worth Fire Department. You claim that the requested report is excepted from required public disclosure by sections 3(a)(1), 3(a)(4), and 3(a)(10) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified Anderson and have solicited arguments in support of your assertion that the requested information is excepted from required public disclosure by section 3(a)(10). In response, we have received a letter from Anderson. Anderson has submitted to us for review a portion of the requested report, claiming that it is excepted from required public disclosure by section 3(a)(10) of the Open Records Act. Because neither the city nor Anderson claims that the remainder of the requested information is excepted from required public disclosure under section 3(a)(10) or under any other exception under section 3(a) of the Open Records Act, we presume that it has been or will be made available to the requestor. *See* Open Records Decision No. 409 (1983); *see also* Open Records Decision No. 363 (1983).<sup>1</sup>

<sup>1</sup>The city also claims that the requested report is excepted from required public disclosure by section 3(a)(4) of the Open Records Act, which excepts "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions; ordinarily, it does not apply once, as here, contracts have been awarded. Open Records Decision No. 541 (1990). Neither the city nor Anderson indicate why the requested information may be withheld under section 3(a)(4) at this time. Accordingly, the requested information may not be withheld under section 3(a)(4).

Section 3(a)(10) protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Anderson claims that the information submitted to us for review constitutes "trade secrets." Accordingly, we need only address the trade secret branch of section 3(a)(10).

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . .* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]

RESTATEMENT OF TORTS § 757, cmt. b (1939). In Open Records Decision No. 107 (1975), this office determined that inventory information could constitute "trade secrets" within the meaning of section 3(a)(10) of the Open Records Act. In that decision, we held that inventory information from grain warehouse reports of the Department of Agriculture was protected from required public disclosure under section 3(a)(10) of the Open Records Act. If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 3(a)(10) to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.<sup>2</sup>

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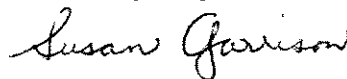
<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended

Essentially, the information submitted to us for review is an inventory of both finished and unfinished goods in Anderson's facility in Fort Worth. The information submitted to us for review reveals the identities, quantities, and locations of approximately 700 chemicals maintained by Anderson as inventory for use in manufacturing its products for sale, and the identities, capacities, and locations of its process equipment. We have examined the documents submitted to us for review and have considered Anderson's arguments in support of its contention that this information constitutes "trade secrets" within the meaning of section 3(a)(10) of the Open Records Act. We conclude that Anderson has established a *prima facie* case that this information constitutes "trade secrets." See also Open Records Decision No. 554 (1990). No argument has been submitted that rebuts the claim as a matter of law. Accordingly, the information submitted to us for review may be withheld from required public disclosure under section 3(a)(10) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-001.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/GCK/lmm

Ref.: ID# 17900

cc: Ms. Ilorna Robinson  
African American Summit  
Health Committee Co-Chair  
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(footnote cont'd.)

by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939); see also Open Records Decision Nos. 319, 306 (1982); 255 (1980). When an agency or company fails to provide relevant information regarding factors necessary to make a 3(a)(10) claim, there is no basis to withhold the information under section 3(a)(10). See Open Records Decision No. 402 (1983).

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